IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF

AUGUST, TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 21614 of 1999

Between:

B. Sateesh Kumar S/o B. Mohan Rao,

Aged 25 years, owner of Auto rickshaw

bearing No.AP 21 T 3314,
R/o.Kurnool Town.

..... PETITIONER

AND

1 The Government of A.P, Represented by its Secretary (Excise & Prohibition), Hyderabad.

2 The Deputy Commissioner of Prohibition and Excise, Mahaboobnagar.

3 Prohibition & Excise Inspector, Alampur , Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to may be pleased to issue a writ order or direction by declaring the action of the second respondent in confiscating auto rickshaw No.AP.21 T 3314 in Proceedings No.CR.No.B3/1343/96 dated 26-04-1997 as illegal, void and violative of Principles of Natural Justice and to set aside the same and consequently to direct the second respondent to observe Principles of Natural Justice and hear the petitioner after giving opportunity before passing any order of confiscation.

Counsel for the Petitioner: MR.SRINIVAS MANTHA

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following O R D E R: (ON BEING MENTIONED)

ORDER:

The present writ petition is filed by the petitioner to declare the action of the second respondent in confiscating his auto rickshaw bearing No. AP 21 T 3314 through proceedings in Crime No.B3/1343/96, dated 26-04-1997, as illegal, void and violative of principles of natural justice.

The grievance of the petitioner is that the second respondent-Deputy Commissioner of Prohibition and Excise, Mahaboobnagar passed the above confiscation order without giving any notice and opportunity of hearing to the petitioner.

It is the case of the petitioner that his vehicle was seized by the third respondent on the ground of illegal transportation of IMFL and on the request made by him, the second respondent has given the interim custody of his auto rickshaw on his furnishing surety and Bank Guarantee for a sum of Rs.7,000/-. While so, the respondents took away his auto rickshaw, which was parked in front of his house and that he recently came to know that his vehicle was confiscated by the second respondent. While doing so, no efforts were made by the respondents to serve the notice on the petitioner as to on what grounds they want to confiscate the vehicle and the said fact is evident from the proceedings dated 26-04-1997 and it is also evident that notices were issued to E. Narasimhulu and G. Krishna Murthy only.

In the counter filed by the respondents, it is stated that a show cause notice as contemplated under Section 13-A of the Andhra Pradesh Prohibition & Excise Act, 1995 was issued on 28-12-1996 and the said notice was served on the accused, driver and owner of the auto on 09-01-1997 by the Station House Officer, Alampur. Though the notice was served on the petitioner, he failed to submit his explanation within the stipulated time. Therefore, the confiscation order was passed.

The petitioner filed W.P.M.P.13995 of 2004 to amend the prayer in the writ petition for a further direction to the respondents to pay a sum of Rs.35,000/- towards replacement costs of the Auto bearing No. AP 21 T 3314 and to return FDR No.FD/20847108, dated 14-11-1996, for a sum of Rs.7,000/- furnished by the petitioner since the respondents failed to follow the procedure of serving any notice to the petitioner before passing the order of confiscation, which is non est in the eye

of law.

Moreover, the records produced by the Government Pleader discloses that the show cause notice and the grounds for confiscation of the vehicle were served on the petitioner. A perusal of the notice, in particular, on the reverse side of page 43, it is seen that the petitioner has put his signature and the same is shown to the learned counsel for the petitioner in the open Court. He submits that such a notice was issued but the confiscation order has not been communicated to the petitioner.

When the petitioner, being owner of the vehicle which was seized, failed to respond to the show cause notice issued by the respondents, he cannot complain that the confiscation order passed is in violation of principles of natural justice.

This Court, while issuing notice before admission on 14-10-1999, directed the release of the auto rickshaw to the petitioner without imposing any conditions. As the averments made in the counter-affidavit filed by the respondents have not been controverted by the petitioner, the contention of the petitioner that no notice was served on him and he was not given any opportunity before passing the confiscation order cannot be accepted. When the F.D.R. was returned to the petitioner, the file discloses that the same was refused by the petitioner stating that he will receive the F.D.R. only after the disposal of the writ petition. In view of the same, learned counsel for the petitioner submits that the respondents may be directed to refund the F.D.R. furnished by the petitioner for a sum of Rs.7,000/-.

Having regard to the facts and circumstances of the case, I see no infirmity in the confiscation order, since the petitioner has not responded to the show cause notice issued by the respondents before passing the confiscation order and ends of justice would met, if a direction is issued to the respondents to return the F.D.R. amount of Rs.7,000/- to the petitioner forthwith.

The writ petition is accordingly disposed of. No order as to costs.

(A.GOPAL REDDY, J)

Date: 18-08-2004

ghn/lvl

To

1 The Secretary,
(Excise & Prohibition), Hyderabad.
2 The Deputy Commissioner of Prohibition and Excise,
Mahaboobnagar.
3 Prohibition & Excise Inspector,
Alampur , Mahaboobnagar District.

4 Two CCs to the Government Pleader for Prohibition and Excise, High Court of A.P., Hyderabad (O.U.T.)

5 Two CD copies.